IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3553 OF 2005

Dhanaji A. Kadam Petitioner

versus

Vanmala D. Kadam & ors. Respondents

Mr.S.S.Manale for petitioner.
None for respondents.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 23.01.2006.
PC :

1. The petitioner-husband has filed this petition under Article 227 of the Constitution of India challenging an order passed by the Trial Court on 3rd February 2005 below Exhibit 49 in Regular Civil Suit No.200 of 1995.

2. It is a common ground that the respondent has filed this suit in the Trial Court and she has claimed from the petitioner maintenance @ Rs.1,500/- per month. The said suit is pending. This suit was restored after it came to be dismissed. After restoration, the matter proceeded and during the course of the proceedings the application Exhibit-49 was filed

by the petitioner-husband. In his submission, the respondent-wife cannot claim maintenance for and on behalf of the minor (respondent no.2) because the paternity of said child/minor is not established or accepted by the petitioner-husband. In his submission, there was no access between the parties. Consequently, when parties have not resided together and had no occasion to have sexual relations, the birth of the minor does not necessarily mean that the petitioner is the father. He applied, therefore, on 6th December 2004 for a DNA Test to be conducted. He also relied upon the fact that the birth certificate produced, is not genuine and from the same it cannot be established that the petitioner is the father of the child.

3. This application has been rejected by the Trial Court and that is how the petitioner is invoking this Court’s jurisdiction.

4. It appears that a statement was made by the petitioner that he is ready for mediation. This Court directed issuance of notice. Thereafter this Court stayed trial in RCS No.200 of 1995.

5. Despite service of notice, the respondent has

not appeared. It is not for this Court to force upon the parties any settlement nor can this Court pass an order that the matter be referred to mediation, if both sides do not desire to do so. This Court’s plain duty is to scrutinise the legality of the order on the touchstone of the principles settled by the Hon’ble Supreme Court while deciding writ petition under Article 227of Constitution.

6. So tested, there does not appear to be any infirmity in the interlocutory order passed by the Trial Court and in my view the observations of the Trial Court were based upon the facts and circumstances then prevailing. If during the course of the evidence the petitioner establishes that the certificates issued by the Gram Panchayat concerned on two different dates are not genuine and that parties having not co-habited there is a dispute about paternity , it would be open for him to apply for the reliefs which have claimed in the application Exhibit-49 and needless to observe that as and when such occasion arises, the Trial Court to consider such request without being influenced by the order under challenge. With these observations the petition is dismissed.

(S.C.DHARMADHIKARI, J.)